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NO. 502

IN THE

Supreme Court of the United States

OCTOBER TERM 1948.

IRA CHASE KOEHNE and JOHN A. SAVAGE, *Petitioners*,

v.

W. BRUCE MATTHEWS, United States Marshal, and Curtis Reid, Resident Superintendent, District of Columbia Jail, *Respondents*,

---

PETITION FOR REHEARING LIMITING THERETO THE PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA.

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PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

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PETITION FOR REHEARING OF, AND LIMITING THERETO, THE PETITION FOR CERTIORARI.

To the Honorable, The Chief Justice of the United States, and The Associate Justices of The Supreme Court of the United States.

1. Your petitioners, Ira Chase Koehne and John A. Savage, respectfully submit this, their Petition for Rehearing of their Petition herein for Certiorari to the United States Court of Appeals for the District of Columbia whose grounds are hereby confined to those hereinafter stated.

2. This petition for rehearing is founded upon other substantial grounds available to petitioners although not previously presented applied to the court next below solely because of the excusable grave inadvertence of petitioner's counsel herein occasioned by his age of 77 especially accentuated by his then grave nervous, thought-distracting painful infliction (similar to that of the King of England) caused by the inflamed swollen tissues of his lower legs, particularly his right one, which was then medically believed would have to be amputated below the knee, but which legs, under new treatment, have lately commenced to heal and be subjected to only occasional far less pain.

3. That said other available substantial grounds, upon which this rehearing petition is founded, being each of these grounds, directly as well as alternatively, stated in this court's Rule 38 (5 c) which is adopted as a part hereof. Each of said grounds being flagrantly, wilfully disregarded in this cause by the United States Court of Appeals for the District of Columbia, as disclosed (R. 7, 8); each substantial violation of each of said grounds being more briefly set forth in other than the order in which they appear in said Rule 38 (5 c).

3A. The applicable statute (note 1, p. 3 of Certi. Pet.) in effect commands that petitions for the writ of habeas corpus shall have the privilege of being, or not, granted accordingly as their respective civil action petitions (R. 1-4) do, or do not, make a prima facie case.

3B. The hereto applicable Constitutional provisions being Art. 1, Sec. 9, cl. 2, and the Due Process clauses of the Fifth and Fourteenth Amendments; the former reading:

> "The Privilege of the Writ of Habeas Corpus shall not be suspended unless when in cases of Rebellion or Invasion the public Safety may require it."

3C. Each of the decisions In Re, 3A and 3B, being doubtless "of general importance", and each "a question of substance relating to the Constitution, • • • or statute of the United States, which has not been, but should be, settled by this court;" (3) and "where that court has not given proper effect to an applicable decision of this court". (4)

3D. Instead of that court next below being constitutionally, and by applicable statute, duly confining itself to the face of the Habeas Corpus petition, and reversing and duly remanding this cause to the trial court, it, to the contrary, grossly denied said 3A and 3B provisions of grave importance, and reveled in unlawfulness 3A, 3B, 3C, (R. 7, 8), and concealing from the record of this cause, by its silence thereon, that incident to the denial of the appeals of layman Savage that court, next below, denied the civil action fundamental right of petitioners to both prove their habeas corpus petition, and to duly amend the same as per.

(1) *Price v. Johnston*, 334 U. S. 266, 291-294, decided about two months prior to that of court next below. (R. 7)

(2) In *Ex parte Yerger*, 75 U. S. (8 Wall.) 85, 95, say this court "The term of this provision necessarily imply judicia action".

(3) A must in this jurisdiction for judicial efficiency.

(4) Typically, *Walker* v. *Johnston*, 312 U. S. 275, 286, quoted from (R. 13); *House* v. *Mayo*, 324 U. S. 42, 45; quoted from (R. 12, 13); *Waley* v. *Johnston*, 316 U. S. 101, 104 (R. 12).

3E. Instead of lawfully confining said constitutional and statute provisions (3B hereof and note 1, Cert. Pet. p. 3 to the face of each petition for the Habeas Corpus writ; and affording civil action amendment privileges thereto (1) (~~preceding page~~) said other court (next below) violated each of said provisions and unlawfully deprives petitioners of the equal protection of the law, in violation of our Con-

stitution whose Fourteenth Amendment denies to the states such deprivation power, but such instrument fails to grant such power to the United States, which renders such power non-existent in our government.

WHEREFORE, it appears that the will of the law in this and like causes requires that the judgments herein be vacated, and that the court next below summarily be directed to remand this cause to the trial court, with directions to vacate its judgment herein and to duly consider any amendment of their petition of which they may be advised; and that this cause be considered and acted upon judicially according to the will of the law, including any applicable decisions of this court, or otherwise as this court may duly determine.

Respectfully submitted,

IRA CHASE KOEHNE,
ORILLE C. GAUDETTE,
Attorneys for Petitioners.

CERTIFICATE OF COUNSEL.

I hereby certify that I have examined the foregoing petition for rehearing and reconsideration in the matter of the craved petition for certiorari whose grounds are herein and hereinbefore restricted to the grounds above specified which are to other substantial grounds not previously presented applied as aforesaid because of the grave excusable inadvertence specified in Paragraph 2 hereof;

And I further certify that the foregoing is presented in good faith, and not for delay, but in furtherance of justice.

IRA CHASE KOEHNE
Counsellor at Law
for the Petitioners.

MEMORANDUM.

The court next below in this cause disobeyed not only the Command of the statute (Cert. Pet. p. 3 note 1) that it "shall forthwith grant such writ * * * if the facts set forth in the petition make a prima facie case * * *" but it furthermore ignored or defied this court and its supervisory powers over subordinate courts; as well as the further typical command of this court in *Botany Mills* v. *United States*, 278 U. S. 289, that

> "* * * When a statute limits a thing to be done in a particular mode, it includes the negative of any other mode. Raleigh, etc. R. R. Co. v. Reid, 13 Wall. 269, 270; Scott v. Ford, 52 Ore. 288, 296."

In such multiple disobedience of statute and the authorative guidance of this court, the court next below also sanctioned the like violations of the trial court; as also directly violated the constitutional rights of petitioner Savage as indicated in 3B, 3D and its four supplements.

Wherefore the granting of this petition is craved in furtherance of the administration of justice under the supervising powers of this court.

Respectfully,

IRA CHASE KOEHNE,
ORILLE C. GAUDETTE,
Attorneys for Petitioners.